



**June 19, 2019**

**Via ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Notice of *Ex Parte*, In the Matter of Updating the  
Intercarrier Compensation Regime to Eliminate Access  
Arbitrage, WC Docket No. 18-155**

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Dear Ms. Dortch:

These *ex parte* comments are filed on behalf of Competitive Local Exchange Carriers (“CLECs”) BTC, Inc. d/b/a Western Iowa Networks, Goldfield Access Network, Great Lakes Communication Corporation, Northern Valley Communications, LLC, OmniTel Communications, and Louisa Communications in response to the *ex parte* letters submitted in the Access Stimulation NPRM Docket<sup>1</sup> by Iowa Network Services, Inc. d/b/a Aureon Network Services (“INS”)<sup>2</sup> and Sprint Corp. (“Sprint”)<sup>3</sup> during the month of May. These *ex parte* comments also briefly address the recent filings made by AT&T Services, Inc. (“AT&T”)<sup>4</sup> and NTCA.<sup>5</sup>

Both INS and Sprint present access stimulation reforms that, like other proposals that have been put forth in this Docket, are not backed up by evidence or economic analysis necessary to justify the policies that they seek. Indeed, no carrier has substantiated the underlying premise that the Commission should take action that would eliminate the free conference calling services enjoyed by millions of American businesses and consumers. Accordingly, the Commission should continue to refrain from taking further action until it receives the necessary evidence to justify *any* rule changes, or, in the alternative, it should close this Docket.

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<sup>1</sup> *In re Updating the Intercarrier Comp. Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155.

<sup>2</sup> Letter from J. Troup, Counsel, INS, to M. Dortch, Secretary, FCC, WC Docket No. 18-155 (May 23, 2019) (“INS *Ex Parte*”).

<sup>3</sup> Letter from K. Buell, Senior Counsel, Sprint Corp., to M. Dortch, Secretary, FCC, WC Docket No. 18-155 (May 16, 2019) (“Sprint *Ex Parte*”).

<sup>4</sup> Letter from M. Nodine, Assistant Vice President – Federal Regulatory, AT&T Services, Inc., to M. Dortch, Secretary, FCC, WC Docket No. 18-155 (June 12, 2019) (“AT&T *Ex Parte*”).

<sup>5</sup> Letter from R. Goodheart, Counsel, NTCA, to M. Dortch, Secretary, FCC, WC Docket No. 18-155 (June 4, 2019) (“NTCA *Ex Parte*”).



## INS *Ex Parte*

The CLECs agree with INS's comments critiquing the proposals submitted by AT&T and CenturyLink as dependent upon "sheer speculation," "unviable," and "contrary to the public interest."<sup>6</sup> However, the CLECs wholly disagree with INS's proposed expansion of T-Mobile's "One Cent Policy," whereby long distance carriers would be permitted to charge consumers \$0.01 per minute for calling numbers associated with free conferencing lines – a charge which would apply on top of consumers' already pricey pre-existing long-distance plans.<sup>7</sup> As explained further below, this proposal is just as misguided and discriminatory as the other proposals INS acknowledges should be rejected.

INS asserts that, by implementing the One Cent Policy, IXC customers as a group will no longer be forced to "subsidize the access costs incurred for a small subset of customers [who use] access stimulating services."<sup>8</sup> The evidence gathered thus far, however, establishes that users of free conferencing services pay enough via their long-distance bills to cover their own access charges. Indeed, the IXCs have not presented any evidence reflecting the access charges they pay for access stimulation calls or the revenues they generate from the customers that use these services,<sup>9</sup> and INS also fails to present any such evidence in its filing. Conversely, the CLECs have provided the Commission with this evidence and have repeatedly shown that IXCs actually make a substantial profit on the calls they deliver to free conferencing providers.<sup>10</sup> This means that users of free conferencing services pay enough via their long-distance bills to cover their own access charges and that non-users are not "subsidizing" these costs.

Moreover, because the CLECs have established that IXCs make a *substantial profit* off of customers that utilize free conference calling services, INS's claim that the One Cent Policy would result

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<sup>6</sup> See INS *Ex Parte* at 4.

<sup>7</sup> See *id.* at 1-4.

<sup>8</sup> See *id.* at 3.

<sup>9</sup> The CLECs have repeatedly explained that, without having obtained and examined revenue data from long distance carriers, it will be impossible for the Commission to understand what the true economic costs of access stimulation even are, and whether those costs are actually as high as the IXCs and CEA providers claim. See e.g., Comments of Competitive Local Exchange Carriers, WC Docket No. 18-155, at 21-26 (July 20, 2019) ("CLEC Comments"); Reply Comments of Competitive Local Exchange Carriers, WC Docket No. 18-155, at 7-8 (Aug. 3, 2018) ("CLEC Reply Comments"); Letter from D. Carter, Counsel, CLECs, to M. Dortch, Secretary, FCC, WC Docket No. 18-155, at 2 (Oct. 2, 2018) ("October 2nd CLEC *Ex Parte*"); Letter from D. Carter, Counsel, CLECs, to M. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (Nov. 5, 2018) ("November 5th CLEC *Ex Parte*"); Letter from D. Carter, Counsel, CLECs, to M. Dortch, Secretary, FCC, WC Docket No. 18-155, at 2-5 (May 13, 2019) ("May 13th CLEC *Ex Parte*").

<sup>10</sup> As the CLECs noted in their opening comments and in *ex parte* discussions with Wireline Competition Bureau staff, during litigation between Northern Valley Communications, LLC ("Northern Valley"), and AT&T regarding AT&T's refusal to pay Northern Valley's deemed lawful access charges, AT&T was required to turn over revenue and cost data, which allowed Northern Valley to conduct an in-depth analysis of how Northern Valley's involvement in access stimulation actually affected AT&T's bottom line. Through this analysis, Northern Valley was able to confirm that AT&T collected \$50 million and made a \$30 million dollar profit on the access stimulation traffic it transported between March 2013 and June 2016. If AT&T had paid its bill to Northern Valley, it would have paid approximately \$9 million in switched access charges. See CLEC Comments at 22-23; November 5th CLEC *Ex Parte* at 2.



in “savings” for IXC’s and their customers puts the proverbial cart before the horse.<sup>11</sup> Implementing a One Cent Policy would not “save” consumers money, but rather create an additional line item for further IXC profits, causing consumers to pay more for a service that they have already paid for. Of course, even if this policy somehow resulted in “savings,” there is no evidence from which a reasonable person could conclude that the IXC’s would pass along those savings to their customers. The record evidence reveals that when the Commission has given the IXC’s savings through substantial access charge reforms, the IXC’s have returned the favor by continuing to raise the rates they charge American consumers.<sup>12</sup> Thus, INS’s proposal would likely only result in the IXC’s continuing to enhance their bottom lines at the expense of free conferencing users.

Of course, INS’s proposal is more than just unmoored from data. It is also patently discriminatory and a violation of Section 202(a)’s antidiscrimination provision, which prohibits common carriers from making “any unjust or unreasonable discrimination in charges.”<sup>13</sup> Under INS’s proposal, charging \$0.01 per minute on any calls directed at conference calling services – and *only* on these calls – would place said calls (and the customers making these calls) on unequal footing. Under binding precedent, rules establishing such unequal treatment for certain types of calls cannot be implemented absent a rational justification and record evidence.<sup>14</sup> As noted above, the evidence gathered thus far in this proceeding establishes that free conferencing users pay enough via their long-distance bills to cover their own access charges.<sup>15</sup> Thus, for this additional reason, INS’s proposal should be wholly rejected by the Commission.

### **Sprint *Ex Parte***

Like INS’s statements, Sprint’s *ex parte* statements are equally unavailing, as the carrier similarly relies on speculative assumptions to support its proposal. Moreover, Sprint attempts to vilify all free conferencing services and access stimulation calls based on the actions of a small group of Boost Mobile customers. In essence, Sprint presents the same type of unsupported statements and proposals as its IXC counterparts and uses the smoke and mirrors approach that has become the norm for IXC’s commenting in this Docket.

According to Sprint, by adopting the “prong one” proposal supported by the other IXC’s, the Commission will be “advancing” several Commission goals, including the “redirect[ion of] hundreds of millions of dollars to broadband infrastructure” and the “deploy[ment of] IP networks.”<sup>16</sup> However, at no point does Sprint attempt to provide evidentiary support for its assertion that there are “hundreds of millions of dollars” in access charges in dispute in this proceeding, nor does it explain how broadband investment will occur if the rural CLECs that have actually demonstrated buildout commitments are

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<sup>11</sup> See *supra* note 10 and accompanying text.

<sup>12</sup> See, e.g., May 13th CLEC *Ex Parte* at 5-6 (citing to various comments and *ex parte* letters filed by IXC’s, all of which fail to address how, if at all, the carriers plan on passing to consumers any savings that may be derived from this proceeding).

<sup>13</sup> 47 U.S.C. § 202(a).

<sup>14</sup> See *Nat’l Ass’n of Reg. Util. Comm’rs v. FCC*, 737 F.2d 1095, 1133 (D.C. Cir. 1984).

<sup>15</sup> See *supra* note 10 and accompanying text.

<sup>16</sup> Sprint *Ex Parte* at 1.



discriminatorily deprived of access revenues and, in addition, forced to pay the additional costs associated with the “prong one” proposal.

To be clear, the CLECs and IXC’s fundamentally disagree on the alleged costs associated with access stimulation; however, even the IXC’s most extraordinary “calculations” estimate that, *at the most*, such services cost “about \$80 million” annually.<sup>17</sup> If this statement were to be taken at face value (and the CLECs believe it should not<sup>18</sup>), that would imply that, *at the most*, access stimulation reforms would allow IXC’s to redirect less than \$100 million – not “hundreds of millions” – towards broadband investment.<sup>19</sup> Moreover, as the CLECs have previously explained, if rural LECs involved in access stimulation, rather than IXC’s, are forced to pay these additional costs, they will additionally be forced to do one of two things: (1) raise the rates their rural end users pay for service or (2) forego the infusion of millions of dollars in broadband buildout and infrastructure investment they have consistently provided.<sup>20</sup> Consequently, depriving access stimulating CLECs of revenues does not make new money appear for broadband investment. Instead, it merely shifts money from local carriers – who have a deep commitment to their rural communities – to larger carriers that have less incentive to invest in small rural communities. If the large carriers were actually interested in making investments in broadband in these rural communities, they have had both abundant resources and ample time to make it happen. The IXC’s charade must be put to an end. The large carriers advocating for the elimination of free conferencing services are never going to use the savings they seek to bury more fiber in rural Iowa and South Dakota and everyone knows it.

The CLECs are equally concerned with the way Sprint mischaracterizes free conferencing services as “fraudulent” based on a handful of isolated experiences.<sup>21</sup> The evidence submitted by Sprint shows that Boost Mobile has an issue with *its customers* committing fraud and violating the terms of service by using SIM dialers to place large volumes of calls. The fraudulent use of SIM dialers is an issue that is, however, not isolated to calls placed to free conference calling and similar services. Unfortunately, it has been a persistent problem on all types of calls to rural America. But, the fact that some of Boost Mobile’s

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<sup>17</sup> See, e.g., Letter from M. Nodine, Assistance Vice President – Federal Regulatory, AT&T Services, Inc., to M. Dortch, Secretary, FCC, WC Docket No. 18-155, at 10 (April 9, 2019).

<sup>18</sup> As previously noted, the CLECs believe AT&T’s “calculation” of the costs associated with access stimulation traffic are far below what the carrier’s unsubstantiated estimate claims, and that, based on the most recent access stimulation traffic volumes reported by IXC’s (which are from 2011), IXC’s pay no more than \$37 million in access charges annually. See CLEC Comments at 28-29.

<sup>19</sup> As the CLECs have previously argued, it is unlikely that the IXC’s would invest *any* money in rural broadband infrastructure as a result of “prong one” being adopted. To date, IXC’s have wholly rejected rural America and have declined investing in rural broadband deployment. Indeed, the record shows that, when IXC’s suddenly had more money at their disposal as a result of the recent tax reforms, they elected to give most of it away in the form of bonuses and charitable contributions, rather than invest in *any* network improvements. See CLEC Comments at 27-28. Moreover, the CLECs have repeatedly asked the IXC’s to provide documents and/or evidence describing their past investments in broadband deployment and their plans for future broadband deployment. See CLEC Comments, Exh. D; May 13 CLEC *Ex Parte* at 8. To date, they have not presented any such evidence or documents, making Sprint’s vague commitment here of little value to the Commission.

<sup>20</sup> See CLEC Comments at 18-20; Letter from D. Carter, Counsel, CLECs, to M. Dortch, Secretary, FCC, WC Docket No. 18-155, Exh. A (Aug. 16, 2018).

<sup>21</sup> See Sprint *Ex Parte* at 7-10.



customers attempt to route traffic through SIM dialers to evade long-distance charges has nothing to do with the CLECs, and Sprint's suggestion to the contrary is patently wrong. Even if access charges were eliminated entirely, some scammers would still try to use SIM dialers to create and sell black market routes in order to avoid long-distance charges. Access stimulation does not create this problem, nor will Sprint's proposal eliminate it. Indeed, Sprint's proposal to eliminate free conference calling services based on isolated incidents of fraud would be on par with advocating for the Commission to put Boost Mobile out of business because a few of its customers are engaged in fraudulent SIM dialing.

The CLECs and 2,500-plus consumers have provided the Commission with numerous real-life examples of how access stimulation and free conferencing services benefit the public.<sup>22</sup> It is this latter group of beneficial free conferencing services to which nearly every call is placed, and the evidence provided in this proceeding establishes that.<sup>23</sup> Thus, the Commission should not ignore the significant benefits enjoyed by millions of consumers who pay their fair share for long-distance traffic and deserve to be able to use the long-distance plans they purchase without interference or discrimination.

### **Additional Filings in Docket**

Both AT&T and NTCA have also submitted recent filings in this Docket;<sup>24</sup> however, keeping with past filings, they still fail to provide the data and evidence necessary to proceed forward. NTCA asserts that the "prong one" proposal should be adopted due to the "ample evidence in the record," however, at no point does the association cite to the "ample evidence" it claims exists, nor does it explain how such evidence has suddenly emerged since its February 22, 2019 statement that "greater analysis and additional evidence are needed."<sup>25</sup> And in AT&T's recent filing, it fails to present *any* new arguments supporting its claims, taking five pages to restate its assertion that all IXC customers are forced to subsidize those customers who use and enjoy free conferencing services – an assertion that the CLECs have refuted in their previous filings and above.<sup>26</sup>

Collectively, then, these filings continue to miss the mark, presenting proposals that are not supported by the necessary data and evidence and that are premised on mischaracterizations and generalized assumptions. It has been more than a year since the Commission opened this Docket, and it should be concerned with the IXCs' and CEA providers' lack of transparency. Based on these concerns, the CLECs again encourage the FCC to close this Docket and retain the access stimulation rules that are already in place. However, in the event the Commission keeps this Docket open, it should issue the CLECs' proposed data requests and obtain the necessary information from the IXCs and CEA providers before proceeding any further.

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<sup>22</sup> See Letter from D. Carter, Counsel, CLECs, to M. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (Feb. 1, 2019).

<sup>23</sup> Indeed, the overwhelming beneficial nature of free conferencing services is also supported by the fact that, in the 12 months this Docket has been open, Sprint is the first commenter to present *any evidence* of a free conferencing call that is not wholly beneficial to the general public.

<sup>24</sup> See AT&T *Ex Parte*; NTCA *Ex Parte*.

<sup>25</sup> See Letter from M. Romano, Senior Vice President – Industry Affairs & Business Development, NTCA, to M. Dortch, Secretary, FCC, WC Docket No. 18-155, at 2 (Feb. 22, 2019).

<sup>26</sup> See *supra* notes 9-10 and accompanying text.





Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in blue ink that reads "G. David Carter". The signature is fluid and cursive, written over a light gray rectangular background.

G. David Carter

cc (Via Email): William Andrie  
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